IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2181 OF 2004

Export-Inspection Council of India a statutory body constituted under the provisions of the Export (Quality Control & Inspection) Act, 1963 functioning under the Ministry of Commerce and Industry having its office at Delhi and branch office at 4th floor, Aman Chambers, 113, Maharshi Karve Road, Mumbai 400 004. ...Petitioner

V/s.

1. Shri Madhukar Arun Sapkale, Santosh Niwas, Pokhran Road No.1, Shastri Nagar, Near Sudarshan Colony, Thane.

2. Shri Prakash M. Gudulkar, residing at 269, Room No.14, Irani Chawl, N.M. Joshi Marg, Mumbai 400 013.

3. Miss Rajeshri S. Shetty, 3/3 Shantilal Compound, Kherwadi Road, Bandra (East), Mumbai.

4. The Presiding Officer, CGIT-I, 1st floor, Shram Raksha Bhavan, Shivshrusthi Road, Opp.Priyadarshini Off.Eastern Express Highway, Sion, Mumbai 400 022. ...Respondents

ALONGWITH

WRIT PETITION NO. 2189 OF 2004

Export-Inspection Council of India a statutory body constituted under the provisions of the Export (Quality Control & Inspection) Act, 1963 functioning under the Ministry of Commerce and Industry having its office at Delhi and

branch office at 4th floor, Aman)
Chambers, 113, Maharshi Karve Road,)
Mumbai 400 004.)...Petitioner

V/s.

1. Shri Tulsidas Krishna Mahalle)
House No.138, Ward No.10,)
Near Abdul Niwas, St.Inez)
Panaji, Goa 403 001.)

2. Shri Jethalal N. Jogadiya,)
Umar Khadi, 1st Lane, Municipal)
Chawl No.64, Room No.18,)
Jail Road, Mumbai 400 009.)

3. Shri K.B. Talwar,)
C/o. Mahadev S. Aski, Geeta Colony,)
Pencil Factory Road,)
V.C.T. Ground, Ulhasnagar-04)

4. Shri K.V. Singh,)
Din Bandhu Nagar, Greece)
General Store, Behind Acme Company,)
Chawl No.9, Saltpane Road,)
Antop Hill, Wadala (E),)
Mumbai 400 037.)

5. Shri D.V. Krishna,)
C/o. Eknath Salunke Chawl,)
Room No.1, Khambalpada,)
Thakurli (E) 421 201.)

6. The Presiding Officer, CGIT-I,)
1st floor, Shram Raksha Bhavan,)
Shivshrushthi Road, Opp.Priyadarshini)
Off.Eastern Express Highway, Sion,)
Mumbai 400 022.)...Respondents

Mr.V. Narayanan with Mr.V.M. Parkar for the Petitioner.

Mr.Arshad Shaikh i/b. M/s.Sanjay Udeshi & Co. for the Respondents.

ALONGWITH

WRIT PETITION NO. 2981 OF 2005

1. Shri Tulsidas Krishna Mahalle)

Indian Inhabitant residing at)
House No.138, Ward No.10,)
Near Abdul Niwas, St.Inez)
Panaji, Goa 403 001.)

2. Shri Jethalal N. Jogadiya,)
Umar Khadi, 1st Lane, Municipal)
Chawl No.64, Room No.18,)
Jail Road, Mumbai 400 009.)

3. Shri K.B. Talwar,)
Mahadev S. Aski, Geeta Colony,)
Pencil Factory Road,)
V.T.C. Ground, Ulhasnagar 4.)

4. Shri K.V. Singh,)
Din Bandhu Nagar (Jai Maharashtra)
Nagar) Greece General Store,)
Chawl No.9, Saltpane Road,)
Near Acme Company)
Antop Hill, Wadala (East),)
Mumbai 400 037.)

5. Shri D.V. Krishna,)
2nd floor, Flat No. 206,)
Om Shiv Darshan,)
Opp. Shiv Mandir,)
Patharli Road,)
Dombivili (East).)...Petitioners

V/s.

1. Union of India)
through the Secretary to the)
Ministry of Commerce)
having its office at Udyog Bhavan,)
New Delhi)

2. Export-Inspection Council of India)
through its Directors (I&Q/C))
(Ministry of Commerce & Industry,)
Government of India))
3rd floor, ND, YMCA Cultural Centre)
Building, 1 Jai Singh Road,)
New Delhi 110 001.)

3. The Joint Director Incharge)
Export Inspection Agency-Mumbai)
4th floor, Aman Chambers,)
113, M.K.Road, Mumbai 400 004.)

4. The Presiding Officer, CGIT-I)
1st floor, Shram Raksha Bhavan)
Shivshrushthi Road, Opp.)
Priyadarshini, Off.Eastern)
Express Highway, Sion,)
Mumbai 400 022.)...Respondents

ALONGWITH

WRIT PETITION NO. 2982 OF 2005

1. Madhukar Arjun Sapkale,)
Santosh Niwas, Pokhran Road No.1,)
Shashtri Nagar, Near Sudarshan)
Colony, Thane-6.)

2. Prakash M. Gudulkar,)
Amrutwel Co-op.Hsg.Society Ltd.,)
Plot No.E-46, R.H. No.8,)
Sector 12, Kharghar, Navi Mumbai,)
Pin 410 210.)

3. Rajeshri S. Shetty,)
Plot No. 101, Suvidha Apartments)
Utsav Complex, Mahim Road,)
Palghar, District Thane.)...Petitioners

V/s.

1. Union of India)
through the Secretary to the)
Ministry of Commerce)
having its office at Udyog Bhavan,)
New Delhi)

2. Export-Inspection Council of India)
through its Directors (I&Q/C))
(Ministry of Commerce & Industry,)
Government of India))
3rd floor, ND, YMCA Cultural Centre)
Building, 1 Jai Singh Road,)
New Delhi 110 001.)

3. The Joint Director Incharge)
Export Inspection Agency-Mumbai)
4th floor, Aman Chambers,)
113, M.K.Road, Mumbai 400 004.)

4. The Deputy District Incharge,)
Pilot Test House,)
Export Inspection Agency-Mumbai)
E-3 M.I.D.C. Marol, Andheri (E),)
Mumbai 400 093.)

5. The Presiding Officer, CGIT-I)
1st floor, Shram Raksha Bhavan)
Shivshrushthi Road, Opp.)
Priyadarshini, Off.Eastern)
Express Highway, Sion,)
Mumbai 400 022.)...Respondents

Mr.Arshad Shaikh i/b. M/s.Sanjay Udeshi & Co. for the Petitioners.

Mr.V. Narayanan with Mr.V.M. Parkar for the Respondents.

CORAM : V.M. KANADE, J.

DATED : APRIL 12, 2007

ORAL JUDGMENT :-

1. All these four petitions can be disposed of by passing a common order since the petitioners in all these petitions are challenging the Award passed by CGIT-I dated 17th October, 2003. The petitioner in Writ Petition Nos.2181/2004 and 2189/2004 is challenging the direction given by the Tribunal directing them to absorb the respondents in both these petitions with effect from 3.2.99 with backwages. The petitioners in Writ Petition Nos.2981 and 2982 of 2005 are challenging the order to the extent that the benefits of regularisation are not granted to them from the date of their initial

appointment. Under these circumstances, all these petitions are being disposed of by a commons judgment.

2. For the sake of convenience, the petitioner Export Inspection Council of India is referred to as "employer" and the respondents are referred to as "workmen".

3. Export Inspection Council of India is a statutory body constituted under the provisions of Export (Quality Control & Inspection) Act 1963 and is functioning under the Ministry of Commerce and Industry and the respondents are employees working with the employer. According to the employer, these workmen have been employed on temporary/contract basis and therefore, do not have any right of permanency. All the respondents workmen joined on various dates. T.K. Mahale joined the services of the employer on 21.6.82 as a Peon. He was paid his wages on daily basis. J.N. Jagadia joined the services of the employer on 10.7.85 as a Sweeper. K.B. Talwar was appointed on 8.7.85 as a Peon. K.V. Singh joined the services of employer as a

Peon on 7.5.86. D.V. Krishna joined the services on 22.5.95 and is Junior Stenographer. Madhukar Sapkale was appointed in April 1989. P.M. Gudulkar joined on 24.2.91 as an Electrician and Kum.Rajshree S. Shetty joined on 22.3.96 as a Stenographer. All these workmen were appointed on daily wages. It is the case of the workmen that they were qualified and eligible for being appointed for the said posts and that though these posts were permanent posts and perennial work was available in the office of the respondents, they were continued as casual labourers illegally.

4. A representation was made to respondent no.1 in which the grievance of the workmen was mentioned and a request was made to the department to regularise the services of the workmen.

5. Initially, the workmen filed two writ petitions in this court viz. Writ Petition Nos.491/99 and 3015/99.

6. In both the petitions, order was passed by the

Division Bench of this Court dated 5.9.99 and direction was given to the employer to pay to the workmen monthly salary which was being paid to the respective posts in the department.

7. Finally on 22.8.2002, this Court by the consent of the employer and the workmen directed the parties to refer the issue of regularisation to the Industrial Tribunal. Before the Industrial Tribunal, the workmen filed their statement of claim and the employer filed their written statement. Both the parties led oral evidence. The Tribunal by a common order allowed the claim by Award dated 17.10.2003. The Tribunal held that the Export Inspection Council is an Industry and further held that the claim of regularisation made by the workmen was legal and valid. However, the Tribunal directed that the date of regularisation would be the date of filing of the writ petition. The Tribunal, therefore, directed that the benefits of regularisation would be granted from 3.2.99 and the petitioners' seniority and arrears of wages too would be awarded from the said date.

8. The learned Counsel for the employer submitted that the workmen had been appointed on Ad-hoc basis and therefore, they could not claim regularisation. The learned Counsel submitted that CGIT did not have jurisdiction to decide the claim which was filed by the Government and merely because both the parties had agreed to refer the matter for adjudication, that would not confer jurisdiction on the said court. He further submitted that in respect of Delhi, Chennai and Cochin offices, persons who were similarly placed as the workmen therein were appointed by the Selection Committee after they were found suitable and the Delhi office management had taken action for fresh appointment as a one time exception in case of Group "D" posts to the extent of vacancies which were available and keeping in view the orders and directions of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others V/s. Umadevi and Others, reported in 2006(4) SCALE 197.** He further submitted that in the case of the employees like D.V. Krishna/Rajshree Shetty and P.K. Gudulkar, the employer was awaiting approval from the

Government of India as these posts fell under Group "C" category and only after approval was received, necessary steps would be taken for their regularisation based on the guide-lines given by the Apex Court in the case of **Umadevi (supra).**

9. It was further submitted that the employees had not undergone the mandatory recruitment procedure and therefore, in view of the judgment in **Umadevi,** the employees could not claim regularisation. It was further submitted that if these employees are regularised based on the CGIT Award then it would become a precedent and other ad-hoc employees also would claim protection in terms of the said Award.

10. The learned Counsel for the employer invited my attention to the observations made by the Apex Court in **Umadevi** case. It is submitted that the order passed by CGIT, therefore, was liable to be set aside. It is submitted that the Tribunal had erred in coming to the conclusion that the employer was an industry. He further submitted that the Presiding Officer of the

Tribunal did not appreciate the fact that there was no vacancy on all India basis. He invited my attention to the impugned order passed by the CGIT and submitted that the said order, therefore, was clearly illegal and was liable to be quashed and set aside. He relied on the judgment of the Supreme Court in the case of **Himanshu Kumar Vidyarthi & Ors. vs. State of Bihar & Ors. reported in FLR 238 (5).** He also relied on the judgment of the Supreme Court in the case of **Pankaj Gupta and others etc. vs. State of Jammu and Kashmir and others, reported in 2004 AIR SCW 5332.** He then relied on the judgment of the Supreme Court in the case of **A. Umarani vs. Registrar, Co-operative Societies and others reported in (2004) 7 SCC 112.** He then relied on the judgment of the Supreme Court in the case of **M.P. Housing Board and another V/s. Manoj Shrivastava reported in (2006) 2 SCC 702** and finally he relied on the judgment of the Supreme Court in the case of **Secretary, State of Karnataka and others V/s. Umadevi and Others, reported in 2006(4) SCALE 197.**

11. The learned Counsel for the employees submitted

that the judgment in the case of **Umadevi** was not applicable to the facts of the present case. He submitted that in the present case, the employees had approached the CGIT on account of the reference which was made by the consent of parties on the ground that employer was not justified in not regularising the employees.

12. He submitted that even if it is held that the ratio in **Umadevi's case** was applicable to the facts of the present case, even then para 44 and 45 of the said judgment clearly carved out an exception and that the employees in this case therefore clearly fell within the four corners of the exception which was carved out by the Supreme Court in the said case. He submitted that all the employees were appointed on clear vacancy and on the permanent post and had worked for more than ten years continuously in the post on which they were appointed and that the employer had denied them salary and other benefits which were available to the permanent employee. He submitted that therefore, the Tribunal had correctly appreciated the evidence on record and had

directed that they should be held concurrent. He, however, submitted that the Tribunal erred in directing the employer to take employees permanently from the date on which they filed the writ petition in the High Court. He submitted that they have worked for more than 10 years and they were entitled to get all the benefits of permanent workmen.

13. I have given my anxious consideration to the submissions made by the learned Counsel for the petitioner and the learned Counsel for the respondents. In my view, the submissions which are made on behalf of the employer by the learned Counsel Mr.V. Narayan cannot be accepted. The Tribunal has after considering the oral and documentary evidence on record has recorded the finding that the employer Export Inspection Council is an industry after taking into consideration the ratio laid down by the Supreme Court in the case of **General Manager vs. A. Srinivasa Rao reported in 1977 (9) SC page 234** and in the case of **Bangalore Water Supply and Sewerage Board vs.Rajappa reported in 1979 Lab IC 467.** It is a well settled position in law that in view of the

aforesaid judgments that in order to determine whether the enterprise is an industry or not, it has to pass three tests which are laid down in the said case viz. that there should be a continuous activity and that there should be co-operation between the employer and the employee and thirdly, there should be production and distribution of goods and services. The Tribunal thereafter after examining the various activities which were conducted by the Council came to the conclusion that all the three aspects were applicable in the case of Export Inspection Council and therefore, it was the industry within the meaning of Section 2(j) of the said Act. In my view, therefore, the Tribunal clearly had jurisdiction to entertain the reference particularly, when reference has been made by the consent of both the parties. The Tribunal has considered the case of each employee individually and after examining the factual position has held that a case was made out for regularisation of the employees. In the case of Shri T.K. Mahale, K.B. Talwar and K.V. Singh, they had joined as Peon in 1982, 1985 and 1986 and that they had worked without interruption from the date they joined

the employment. In the case of J.N. Jagadia, he was working since 1987 without break and on daily wages as a Sweeper. Similarly, D.V. Krishna was appointed from 1985. The Tribunal, therefore, has applied its mind to the facts and circumstances of each employee and thereafter, passed the impugned order.

14. The learned Counsel for the employer has relied on the case of **Umadevi**, however, was unable to point out whether the ratio in the case of **Umadevi** is applicable to the facts of the case or not. Even if it is assumed that the ratio is applicable to the facts of the present case, even then para 44 and 45 of the judgment on **Umadevi** reported in **2006(4) SCALE Page 197** has observed as under :-

> "44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant poss might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in

> the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but no subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.
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> 45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

15. In my view, the case of the employees in any case clearly fall within the exception which is carved out in **Umadevi.** The employees having worked for more than ten years in the regular vacancy on a permanent post and they have not been appointed in an irregular manner and they have not worked as a result of any order

of stay passed by any court, the Tribunal, therefore, was justified in passing the impugned order of regularising them. I do not see, therefore, any infirmity in the impugned order passed by the CGIT. The only question which now remains to be seen is whether the employees are entitled to claim permanency from the date of their initial appointment. In my view, the Tribunal was justified in granting them regularisation from the date of their filing their writ petition and therefore, I do not see any reason to interfere with the said order. The claim of the employees, therefore, seeking permanency from the date of their initial appointment cannot be accepted.

16. It is, however, clarified that the department is directed to consider their past services for the purpose of pension, gratuity and other benefits. The employees would not be entitled to claim promotion or benefits of promotion during this period. They may, however, make a representation to the employer and claim "Assured Career Progression". If the said representation is made, the employer shall consider it in accordance with law and if

possible favourably.

17. With these directions, all these writ petitions are disposed of. Rule is made absolute in the above terms.

18. In view of the order passed in these matters, the connected Notice of Motions do not survive and are disposed of as such.

(V.M. KANADE, J.)